

NELSON V. CITY OF HAYWARD

Case No. cv-07222-SK

Exhibit 4

DEPOSITION OF SERGEANT MATTHEW MCCREA

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

--oOo--

ROY NELSON III, Successor-
in-Interest to Decedent ROY
NELSON; ORENELL STEVENS,
individually,

Plaintiffs,

vs.

CASE NO.:
3:16-cv-7222

CITY OF HAYWARD, a municipal
corporation; MICHELLE HALL, in her
individual and official capacity
as Police Officer for the CITY OF
HAYWARD; NATHANAEL SHANNON, in his
individual and official capacity
as Police Officer for the CITY OF
HAYWARD; MATTHEW MCCREA, in his
individual and official capacity
as Police Sergeant for the CITY OF
HAYWARD; JOHN PADAVANA, in his
individual and official capacity
as Police Officer for the CITY OF
HAYWARD and DOES 1-50, inclusive,
individually and in their official
capacity as police officers for
the City of Hayward,

CERTIFIED COPY

Defendants.

/

DEPOSITION OF SERGEANT MATTHEW MCCREA

TUESDAY, DECEMBER 5, 2017

(CONFIDENTIAL Page 20, Line 20 to
Page 26, Line 18 are bound separately)

REPORTED BY: ANGELICA R. GUTIERREZ, CSR NO. 13292

DEPOSITION OF SERGEANT MATTHEW MCCREA

1 had been called to have this person removed, which
2 later it was determined to be Mr. Nelson.

3 Q. So it wasn't your understanding at the time
4 that there was a request for a 5150 detention of
5 Mr. Nelson?

6 A. As the call unfolded, I heard the request for
7 a what's known as code two, which is an ambulance to
8 respond for a 5150 detention, and that's nothing
9 uncommon.

10 Q. Okay. So as you became -- I assume you were
11 listening to the radio traffic or reading your CAD for
12 further information?

13 A. Correct.

14 Q. Okay. And as time passed, you gathered more
15 information about the call, correct?

16 A. A little bit here and there, yes.

17 Q. But at some point you did end up responding to
18 the call, correct?

19 A. Only after Officer Shannon had requested my
20 presence.

21 Q. Okay. So Officer Shannon went over the radio
22 and asked for the sergeant to come to --

23 A. Asked for the supervisor.

24 Q. Okay. What was your understanding why you
25 were being summoned to the area?

DEPOSITION OF SERGEANT MATTHEW MCCREA

1 A. Officer Shannon had said that he needed the
2 superior to respond as the Wrap, leg restraining
3 device, may need to be deployed.

4 Q. Okay. And based on my understanding, correct
5 me if I'm wrong, the supervisor would be the person who
6 had the Wrap in the vehicle; is that correct?

7 A. That's correct.

8 Q. Okay. And is the supervisor the only person
9 that is permitted to carry a WRAP device?

10 A. It's the only vehicles that have the WRAP are
11 the supervisor vehicle.

12 Q. So for -- in order for a patrol officer to get
13 a WRAP device, they would have to summon the sergeant
14 or an acting sergeant, correct?

15 A. They would need to summon the supervisor.

16 Q. I'm assuming that there are supervisors above
17 the level of sergeant who could also respond with the
18 WRAP device; is that correct?

19 A. Correct.

20 Q. Okay. But to your understanding, can anybody
21 below level of sergeant have a WRAP device in their
22 vehicle with the intention to use it?

23 A. Not with the intention to use it, no.

24 Q. What is the requirement from the supervisory
25 level of permission required to utilize the WRAP

DEPOSITION OF SERGEANT MATTHEW MCCREA

1 device?

2 A. It's -- the reason that the sergeants have the
3 WRAP in their vehicle is so that way -- it's one of
4 those calls, as I had said earlier, where a supervisor
5 is required to respond. The sergeants are the ones
6 that have the WRAP. They are the ones who are required
7 to respond out there to be able to evaluate the
8 situation.

9 Q. Okay. So would it be fair to say that when
10 somebody summons you to bring the WRAP, you would come
11 to the scene and evaluate the potential need for the
12 use of the WRAP?

13 A. Yes.

14 Q. Okay. Do you have an understanding why are
15 only the sergeants allowed to have the WRAPs or are
16 allowed to give permission to use the WRAPs?

17 A. Just how our policies and procedures are
18 written.

19 Q. So you don't have any understanding of the
20 reason for that?

21 A. Just the policy and procedure of the
22 department.

23 Q. So you're just following directions?

24 A. Yes.

25 Q. Fair enough. And so from the time that --

DEPOSITION OF SERGEANT MATTHEW MCCREA

1 A. Correct.

2 Q. So what was the plan for getting Mr. Nelson
3 out of the car?

4 A. Well, the initial plan I had developed was to,
5 since Mr. Nelson was seated in the back of the car with
6 his back facing the driver's side rear door, was to
7 open up that door, and while he was still seated in the
8 car, at that point to be able to apply the handcuffs
9 while he was still seated in the car before having --

10 Q. And then in the plan, the intention, once he
11 was handcuffed, was the intention --

12 A. Was to remove him from the car and have him
13 lay down on the ground so the WRAP could be applied.

14 Q. Okay. Was there any discussion about
15 handcuffing Mr. Nelson without opening the car door --
16 window rolled down?

17 A. Not that I recall. That would have been
18 impossible to do with the car.

19 Q. It would have been impossible to roll the
20 window down and handcuff him through the bars?

21 A. There's not enough room to be able to do that.

22 Q. Okay. And do you know if -- to the best of
23 your understanding, would your arms fit through the
24 bars?

25 A. It's a complete officer safety issue. In my

DEPOSITION OF SERGEANT MATTHEW MCCREA

1 opinion, if you get your arms through there, you can
2 get stuck, or if the person who is in the back decides
3 to go on the attack, you're stuck. They grab your arms
4 and that would -- I would never even consider that.

5 Q. So more not that it's impossible, more that it
6 would be unwise; is that more accurate?

7 A. Even sitting here just trying to think of how
8 it would even be done, I can't even formulate a plan of
9 how we would do it. So in my opinion, it would be
10 impossible.

11 Q. Okay. Fair enough. Obviously, you guys
12 didn't discuss that in any regard?

13 A. Right.

14 Q. Okay. Fair enough. And so the intention
15 obviously was just to put Mr. Nelson into the WRAP
16 device, and what were you going to do with him?
17 Assuming you successfully placed the WRAP device, what
18 was the end game on the plan? What were you going to
19 do with him?

20 A. The end game would have been to transport him
21 to St. Rose hospital on our own outside of the normal
22 protocol just because of the delay in ambulances.

23 Q. Okay. So it was the intention to go ahead and
24 go outside of protocol and self-transport him to
25 St. Rose?

DEPOSITION OF SERGEANT MATTHEW MCCREA

1 all the camera footage, it was Hall and Shannon were
2 the ones that I remember at the upper body.

3 Q. And then you said Officer Padavana down at his
4 legs?

5 A. Yes, he was helping with the legs.

6 Q. Who else was down at Mr. Nelson's leg?

7 A. I was.

8 Q. Okay. So at some point you went down by Mr.
9 Nelson's legs?

10 A. Correct.

11 Q. And at some point, did officer Padavana put
12 Mr. Nelson into a figure-four leg lock?

13 A. Yes, he had him in a figure four.

14 Q. Okay. And did he have him in the figure four
15 when you brought over the WRAP device?

16 A. Yes.

17 Q. Did you ask Officer Padavana or did he on his
18 own accord remove Mr. Nelson from the figure four to
19 facilitate the WRAP being placed?

20 A. Yes. The figure-four hold was removed so we
21 could straighten his legs out.

22 Q. Because obviously you couldn't put him in a
23 WRAP if the figure-four wasn't applied?

24 A. Correct. The WRAP is designed to be applied
25 to straight legs.

DEPOSITION OF SERGEANT MATTHEW McCREA

1 Q. And to your best estimate, how long was Mr.
2 Nelson held in the figure four?

3 A. I'm not sure. My attention wasn't on
4 Mr. Nelson at that time; I was retrieving the WRAP
5 portions.

6 Q. Okay. And at that point, you guys began to
7 try to apply the WRAP device?

8 A. That's correct.

9 Q. Okay. To the best of your understanding, what
10 was going on with Mr. Nelson's upper body?

11 A. I do not remember. I don't know.

12 Q. Were you in a position where you weren't able
13 to see his upper body?

14 A. I was focused on getting his legs into the
15 ankle strap, getting his ankles cross so the ankle
16 strap could be applied, and that was my job. That was
17 my focus. Everything else at that time, I wasn't
18 paying attention to. I was relying on my partners to
19 be able to execute their job.

20 Q. Okay. I'm not sure -- do you recall making a
21 statement about, you know, when you were down Nelson's
22 legs, having, I guess what we refer to like a tunnel
23 vision, just focused in, sort of not cognizant what was
24 going on besides Mr. Nelson's legs?

25 A. That's a fair assessment. I'm working on the

DEPOSITION OF SERGEANT MATTHEW MCCREA

1 lower portion of his body, and my focus at this time is
2 to get his legs straightened and the ankles crossed.

3 Q. Okay. So at that point, you and Officer
4 Padavana began trying to get Mr. Nelson's legs into the
5 WRAP?

6 A. Correct.

7 Q. Okay. At any point, was Officer Shannon
8 assisting you with trying to get Mr. Nelson's legs into
9 the WRAP device?

10 A. Not that I recall. Not at that moment.

11 Q. At any point, did Officer Shannon try to
12 assist in getting Mr. Nelson's lower portion into the
13 WRAP?

14 A. I don't recall.

15 Q. Do you recall during this scenario seeing what
16 Officer Shannon was doing at all?

17 A. I just remember him being up on the upper end
18 of Mr. Nelson's body. What exactly he was doing, I
19 can't recall.

20 Q. You don't recall seeing Officer Shannon with
21 his knee on Mr. Nelson's back, sort of leaning over his
22 body towards the lower portion of his body?

23 A. I don't remember that at all.

24 Q. Are you familiar with the term called
25 "positional compression," sometimes referred to as

1 A. The lower portion of the WRAP is two
2 components, the individual ankle strap and then the leg
3 restraint.

4 Q. Okay. And what, if any, delay was created by
5 the strap being -- attempting to apply the ankle strap
6 incorrectly?

7 A. In my opinion, minimal because I had the -- I
8 was actually the one that had the ankle strap and in
9 the time -- it took me longer to finally get his left
10 -- it would have been his left leg that was bent to be
11 able to get that straight and get his ankles crossed to
12 slide in -- the next step would have been to slide the
13 ankle strap underneath his feet -- or above his feet
14 and under his legs and wrap it around and Velcro tie
15 it. So I got that underneath, got it over the top,
16 realized it was upside down, pulled it out and got it
17 turned around in order to secure it.

18 Q. Just the delay of physically taking it out and
19 turning it over?

20 A. Yeah.

21 Q. Okay. Officer Padavana gave an estimate of in
22 his interview that getting Mr. Nelson's legs into the
23 leg portion of the WRAP took between three and five
24 minutes. Do you agree with that estimate of time?

25 A. I'm sorry. Who gave that?